

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0271**  
**Sales Tax**  
**For the Year 2002**

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**ISSUE**

**Sales Tax—Assessment; Exemption for Rental and Leasing**

**Authority** IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-9-6; IC 6-2.5-5;  
 IC 6-2.5-5-8; IC 6-2.5-4-10(a); IC 6-2.5-8-1; IC 6-2.5-9-2;  
 IC 6-2.5-8-1(b); Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741  
 N.E.2d 816, 818 (Ind. Tax 2001);

Taxpayer protests the assessment of sales or use tax on the purchase of an aircraft Taxpayer asserts is being used for rental or leasing.

**STATEMENT OF FACTS**

On April 12, 2002, Taxpayer filed Articles of Incorporation with the Indiana Secretary of State to register a For-Profit Domestic Corporation. The corporate name chosen included the words "Leasing Company, Inc." On April 15, 2002, Taxpayer purchased a 1978 Cessna 421C. Four months later on August 12, 2002, the Compliance Division—Aeronautics of the Indiana Department of Revenue sent a letter to Taxpayer informing Taxpayer that the aircraft was not properly registered with the State of Indiana—which is required to be done within 31 days after purchase. The Department enclosed an application for the benefit of Taxpayer to complete. Taxpayer completed and submitted Form 7695, **Application for Aircraft Registration or Exemption**. Taxpayer elected exemption from sales/use tax: **Rental or Lease to others**. Two months later, on October 2, 2002, Taxpayer submitted an application for a retail merchants number.

Sixteen months later on February 25, 2004, the Compliance Division sent a letter to Taxpayer disallowing the sales/use tax exemption on the basis that Taxpayer had remitted a minimal amount or no sales/use tax. Taxpayer protested the assessment. Compliance sent a reply letter requesting specific information and documentation to substantiate the protest. Compliance reminded Taxpayer that the supporting documentation was required to have been submitted with the protest. Taxpayer later submitted the documentation. On June 9, 2004, the protest was referred to the Legal Division. On September 1, 2004 a hearing was set for November 30, 2004. That hearing was held and this Letter of Findings results.

## DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Indiana retail transactions are subject to the imposition of an excise tax—known as the state gross retail tax. IC 6-2.5-2-1. Sales/use tax is due on the purchase of an aircraft. *See* IC 6-2.5-9-6. Exemptions to sales/use tax exist. *See* IC 6-2.5-5. One exemption is property acquired for resale, rental, or leasing in course of business. IC 6-2.5-5-8. However, tax exemption statutes are construed strictly in favor of taxation. Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741 N.E.2d 816, 818 (Ind. Tax 2001). To prevail, Taxpayer must prove that it meets the requirements of IC 6-2.5-5-8.

IC 6-2.5-4-10(a) states that a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. IC 6-2.5-8-1 states that a retail merchant may not make a retail transaction in Indiana, unless he has applied for a registered retail merchant's certificate. A merchant who makes a retail transaction without having applied for and obtaining a registered retail merchant's certificate commits a class B misdemeanor. IC 6-2.5-9-2. Taxpayer's corporate name includes the words **Leasing Company, Inc.** While corporate names may vary—the use of these terms is an indicator of Taxpayer's business intentions. However, that requires substantiation—a name alone is not proof of business dealings.

Days after registering as a For-Profit corporation, Taxpayer purchased an aircraft for \$335,000. Taxpayer's corporate agent indicated at the hearing that he is active in many business enterprises and has been in business for many years. The agent further indicated that Taxpayer is affiliated with other businesses that agent operates. Such testimony confirms that Taxpayer's corporate agent is a knowledgeable and successful entrepreneur. As such, Department has to presume from the agent's statements that Taxpayer would promptly secure a Retail Merchants Certificate if leasing is to be the business enterprise.

As well, it is to be expected that Taxpayer also would promptly and diligently register the aircraft. But this did not happen. Taxpayer had to be prompted by the Department to register the aircraft—four months after purchasing it. It is fair to presume that the common Indiana citizen is aware that a vehicle is required to be registered—especially an aircraft that represents a major investment for a business. The Department has received no evidence as to why a corporate agent—who states he is a knowledgeable and successful business person—failed to secure a Retail Merchants Certificate in a timely manner. IC 6-2.5-8-1(b) imposes a modest \$25 fee to obtain one. The six-month delay in obtaining a Retail Merchants Certificate and the four month delay in registering the aircraft are strong evidence that—despite the corporate name—Taxpayer was not diligent in establishing an intended purpose for the use of the aircraft as rental or leasing.

Taxpayer did secure a lease for the aircraft on May 28, 2002. At the time of the lease, Taxpayer had not registered the aircraft nor did Taxpayer have a Retail Merchants Certificate. This lease lasted for one year—terminating in June 30, 2003. The lease was terminated because Lessee stated that the aircraft was not being used enough to make it financially beneficial. An investigation of documentation provided by Taxpayer indicates that Lessee flew the aircraft infrequently. Documentation provided by Taxpayer also indicates that the aircraft was used by the corporate agent and Taxpayer's affiliated businesses several times after the purchase.

At the hearing, Taxpayer stated that the reason the aircraft was purchased was to lease it to Lessee. Taxpayer also stated that because of maintenance requirements, bad weather, and a downturn in the market for this type of aircraft, Taxpayer had a difficult time finding business. Taxpayer also stated that it attempted to sell the aircraft—to no avail. Taxpayer recently secured several possibly lucrative leases. But all of this is unpersuasive because the Department has requested Taxpayer to provide detailed documentation to substantiate the use of the aircraft. The hearing officer asked Taxpayer to provide a narrative marrying the assertions made by Taxpayer to the supporting documentation. This request was stated to Taxpayer at the hearing and a letter mailed after the hearing. Specifically, the Taxpayer was asked to provide documentation of the attempt to sell the aircraft. None was provided. The case file is replete with duplicate copies of documents. But the scattered pieces do not create a completed picture of Taxpayer's business intentions to lease.

A seasoned and experienced corporate agent would be diligent in securing necessary documentation and registrations so as to demonstrate business intentions. Taxpayer had to be prompted by the Department to register the aircraft—four months after the purchase. Additionally, Taxpayer claimed a sale/use tax exemption for rental or lease to others on the registration application, **Form 7695**—but did not supply a Retail Merchants Number to substantiate a claim for exemption. It was two more months before Taxpayer had a Retail Merchants Certificate—making it six months after the purchase of the aircraft before Taxpayer establishes any legal intention to attempt to lease or rent the aircraft. Form and substance work to complement each other in showing intention. Aircraft registration is required to be filed within 31 days after purchase. The reason for this time limit is to have Taxpayer declare the intention of a purchase contemporaneous to the purchase—not four or six months later. The General Assembly clearly and definitively has stated its intention concerning registration of aircraft and payment of sales/use tax. IC 6-2.5-9-6 states that the state may not register an aircraft unless the person obtaining the registration:

- (1) presents proper evidence, prescribed by the Department of Revenue, showing that the sales/use taxes have been paid or that sales/use taxes are inapplicable because of an exemption; or
- (2) files the proper form and pays the sales/use taxes due on the aircraft.

A person who purchases an aircraft is required to pay the sales/use taxes to the Department of Revenue. A person who knowingly fails to remit all or part of the sales/use taxes that are due commits a Class A misdemeanor. The form and proper evidence proscribed by the Department is Form 7695, **Application for Aircraft Registration or Exemption**.

While Taxpayer may have had an intention to lease the aircraft at some time after the purchase—Taxpayer was not able to lease the aircraft according to the revenue statutes promulgated by the General Assembly because Taxpayer had neither registered the aircraft nor obtained a Retail Merchants Certificate until prompted to do so. For the first six months, Taxpayer was operating the aircraft for its own use—as according to the tax statutes.

### **FINDING**

Taxpayer's protest is denied